

JOSEPH P. RUSSONIELLO (CABN 44332)
United States Attorney

BRIAN J. STRETCH (CABN 163973)
Chief, Criminal Division

WENDY THOMAS (NYBN 4315420)
Special Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, CA 94102
Telephone: (415) 436-6809
Facsimile: (415) 436-7234

NOAH ABRAMS
Law Clerk

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
NICOLE LEA MAYS,)
)
Defendant.)
)
_____)

No. CR 07-0295 MAG

GOVERNMENT'S MOTION IN LIMINE
PURSUANT TO FED. R. EVID. 201 and
FED. R. CRIM. P. 26.1 TO TAKE
JUDICIAL NOTICE OF ADJUDICATIVE
FACTS RE: HEROIN AND MARIJUANA
ARE CONTROLLED SUBSTANCES

PRE-TRIAL: April 1, 2008
TIME: 2:00 p.m.
COURT: The Honorable Elizabeth D.
Laporte

I. INTRODUCTION

The United States moves *in limine* pursuant to Rule of the Federal Rules of Evidence and Rule 26.1 of the Federal Rules of Criminal Procedure to take judicial notice of certain adjudicative facts regarding the status of heroin and marihuana as controlled substances. In particular, the government asks the Court to take judicial notice of the following:

(1) Under United States federal law, HEROIN is a schedule I controlled substance pursuant to: 21 U.S.C. § 812(c)(b)(10); and

(2) Under United States federal law, MARIHUANA is a schedule I controlled substance pursuant to: 21 U.S.C. § 812(c)(c)(10).

(3) Under United States federal law, there is no legal prescription for HEROIN pursuant to 21 U.S.C. § 812(b)(1)(C) and 21 U.S.C. § 812(c)(b)(10).

(4) Under United States federal law, there is no legal prescription for MARIHUANA pursuant to 21 U.S.C. § 812(b)(1)(C) and 21 U.S.C. § 812(c)(c)(10).

II. ARGUMENT

Rule 201 of the Federal Rules of Evidence provides:

(a) **Scope of rule.** This rule governs only judicial notice of adjudicative facts.

(b) **Kinds of facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is . . . (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

* * *

(d) **When mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

* * *

(g) **Instructing jury.** . . . In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

A. The Court Should Take Judicial Notice of United States Law

The Court may take judicial notice of the fact that, under United States federal law, heroin is listed as a schedule I controlled substance. 21 U.S.C. § 812(c)(b)(10).

The Court may take judicial notice of the fact that, under United States federal law, marihuana is listed as a schedule I controlled substance. 21 U.S.C. § 812(c)(c)(10).

The Court may take judicial notice of the fact that, under United States federal law, there is no legal prescription for heroin. 21 U.S.C. § 812(b)(1)(C) and 21 U.S.C. § 812(c)(b)(10).

The Court may take judicial notice of the fact that, under United States federal law, there is no legal prescription for marihuana. 21 U.S.C. § 812(b)(1)(C) and 21 U.S.C. § 812(c)(c)(10).

1 Because this is black-letter law, the Court should instruct the jury that it is required to accept
2 the foregoing as conclusive fact. (This type of judicial notice is therefore more equivalent to
3 “legislative facts” than “adjudicative facts,” and could therefore be given along with the other
4 jury instructions.) In the alternative to giving judicial notice of these facts, the Court could also
5 instruct the jury of the above-reference facts.

6 **CONCLUSION**

7 The Court should take judicial notice of the foregoing facts, or, in the alternative, instruct the
8 jury of the above-referenced facts.

9 DATED: March 18, 2008

10 Respectfully submitted,

11 JOSEPH P. RUSSONIELLO
12 United States Attorney

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14 _____/s/
15 WENDY M. THOMAS
16 Special Assistant United States Attorney
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